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ALEXANDER L. STEVENS,
SUPREME COURT CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

SYDNEY M. EISENBERG, Petitioner,

vs.

CASE NO. 83-1999

UNITED STATES OF AMERICA, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

REPLY BRIEF FOR SYDNEY M. EISENBERG
PETITIONER

A P P E N D I X

SYDNEY M. EISENBERG
PETITIONER, PRO SE

1131 West State Street
Milwaukee, Wisconsin 53233
414/271-0931

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EDITOR'S NOTE

PAGES 1A thru 23 WERE POOR
HARD COPY AT THE TIME OF FILMING.
IF AND WHEN A BETTER COPY CAN BE
OBTAINED, A NEW FICHE WILL BE
ISSUED.



RONALD L. BONK REPORTING COMPANY

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 73-CR-118

SIDNEY M. EISENBERG.

Defendant.

February 18, 1982

Document production proceeding had in
the entitled cause at the offices of the United States
Attorney, 517 East Wisconsin Avenue, Milwaukee, Wisconsin,
pursuant to court order.

A P P E A R A N C E S:

Mr. Joel R. Levin, and
Mr. Robert J. Laskowski,
United States Attorney's Office,
517 East Wisconsin Avenue,
Milwaukee, Wisconsin 53202,
appeared on behalf of the Plaintiff,

Mr. Sydney M. Eisenberg,
1131 West State Street,
Milwaukee, Wisconsin 53233,
appeared pro se.

1A

324 EAST WISCONSIN AVENUE
SUITE 1400
MILWAUKEE, WISCONSIN 53202
PHONE (414) 277-4781



1

TRANSCRIPT OF PROCEEDINGS

2 JOEL R. LEVIN was duly sworn under oath to
3 tell the truth, the whole truth and nothing but the
4 truth.

5 MR. LEWIN: For the record now we are here in
6 the proceeding of the United States of America versus
7 Sydney M. Eisenberg, and the purpose of this meeting is
8 for the Government to turn over to Mr. Eisenberg
9 documents relative to the hearing on his motion for a
10 position for a writ of error coram nobis. I have in
11 front of me the documents which we believe are relevant
12 to that pleading, and I have made a copy of those
13 documents for Mr. Eisenberg which is contained in a
14 folder here. I also have a copy for the court reporter
15 which I would ask to be incorporated in the transcript.

16 I will now proceed to go through the documents
17 one by one, and Mr. Eisenberg if he wishes can follow
18 along to make sure that there is a copy of each of these
19 documents in his folder.

20 The first document consists of the referral
21 report for potential fraud cases on Sydney and Miriam
22 Eisenberg. The second document consists of a memorandum
23 of the May 24, 1971 interview of Sydney Eisenberg by
24 Terrence Kelly which also—

25 MR. EISENBERG: What now?



1
2 MR. LEVIN: It is the memorandum of Sydney—
3 memorandum of the interview of Sydney Kisenberg by
4 Terry Kelly on May 24, 1971. This memorandum also
5 contains the designation, Witness 2-1 from the special
agent's report.

6 The third document consists of a one-page
7 document with five subjects listed on it, starting with
8 sale of Dishelt Stock.

9 The fourth document is a two-page document
10 dated May 24, '71, entitled "B. Levine and SWL."

11 The fifth document consists of six pages of
12 schedules entitled "Outstanding Checks as of 12-31-63."
13 The schedule is dated 6-1-71, and these six pages of
14 schedules also have attached to them two pages of
15 adding machine tapes.

16 The sixth document is a six-page document
17 entitled "Facts Stock Sale."

18 The seventh document is a one-page document
19 entitled "Terry; Kisenberg", and it is signed at the
20 bottom by Fred.

21 MR. KISENBERG: Fred who?

22 MR. LEVIN: Fred who? I'm not here to
23 testify. I'm here to turn the documents over.

24 MR. KISENBERG: You don't want to show it to
25 me; is that it?



1
2 MR. LEVIN: The eighth document consists of
3 a two-page document, "Consent of Stockholders of Prospect
4 Knights Company".

5 The ninth document is a two-page document
6 consisting of May 31, 1968 letter of E. H. Levine to
7 Mr. Edward Gillman and attached schedule.

8 MR. KIRKWOOD: What number is that?

9 MR. LEVIN: That's the ninth document.

10 The tenth document is a three-page document
11 entitled "SAM Bloomberg". It is dated 12-3-70
12 with the initials "TPX" on it. The first page is hand-
13 written, and the second and third pages consist of copies
of checks.

14 The eleventh item is a one-page document
15 entitled "1965 Return", and it's dated 9-21-70.

16 The twelfth item is a one-page document entitled
17 "Information Wanted" in regard to distribution of funds
18 received from Mutual Federal Savings and Loan. This
19 item is dated 12-22-70.

20 The thirteenth item is a four-page schedule
21 entitled "Analysis of Checks Issued from American City
22 Bank for 1963". This item is dated 12-10-70.

23 The fourteenth item is dated 12-10-70. The
fourteenth item is a one-page document entitled "Advances
to and from Affiliated Corporation".



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The fifteenth item is a one-page document
entitled "Information Wanted" dated 11-20-70.

The sixteenth item is a one-page-- The
sixteenth item I don't have in front of me now. I will
get it. It's a one-page excerpt from the diary of Simon
Levine for January 13, 1971.

MR. EISENBERG: Why don't you have it?

MR. LEVIN: I inadvertently left it out. I
believe it was previously sent to you in the mail.

MR. EISENBERG: It was not.

MR. LEVIN: The seventeenth item consists of a
three-page excerpt from the "Audit Technique Handbook
for Internal Revenue Agents", and it includes as the
first page of it a "Manual Transmittal" dated January 13,
1969

The eighteenth item is the Intelligence
Division organizational list for March 12, 1970.

The nineteenth item is the Intelligence Division
organizational list for July 12, 1970.

The twentieth item is the Intelligence Division
organizational list for September 8, 1970.

The twenty-first item is the Intelligence--

MR. EISENBERG: What date? I can't write that
fast.

MR. LEVIN: Item 20 is the organizational list



for September 8, 1970. Item number--

MR. EISENBERG: Am I permitted to ask you about these or no? Before you indicated that you are not subject to questioning, so I don't know what you mean. Are you trying to warn me off or--

MR. LEVIN: I just-- This proceeding is for us to turn the documents over to you, and I just--

MR. EISENBERG: May I ask you about that?

MR. LEVIN: No. I don't plan to testify as to the documents. It's just-- We just plan to turn them over to you.

Item No. 21 consists of the Intelligence Division organizational list for January 11, 1971.

Item No. 22 is the Intelligence Division organizational list for April 30, 1971.

Item No. 23 is the Intelligence Division organizational list for July 1, 1971.

MR. EISENBERG: Can I see these things you're turning upside down? I don't know why you are doing all of this. You are not showing them to me.

MR. LEVIN: I have made a copy for all of these documents. The folder is in front of you. You are able to compare the copies that I made.

MR. EISENBERG: Why are you talking to her, not to me? You are not letting me question you or talk



1 to you. Do you want me to come back when you're done.
2 I don't know why you got me here for this. What's the
3 point.

4 MR. LEVIN: To continue the twenty-fourth
5 item consists of 29 pages of notes entitled "Notes of
6 T. Kelly Prepared During 1981 and 1982".

7 I should say for the record the copies made
8 for Mr. Eisenberg and for the court reporter contain
9 29 pages, and the reason for that is that one of the
10 pages in the original has writing on both sides. So,
11 therefore, an additional page is in the copies.

12 If we could go off the record for a minute,
13 I'll go and get that item that was missing.

14 MR. EISENBERG: You haven't shown me anything
15 anyway, so—

16 MR. LEVIN: Back on the record. I have returned
17 to the room with Item No. 16 which consists of a one-
18 page excerpt from the diary of Sam Levine for January 13,
19 1971, and I am putting a copy of that into Mr. Eisenberg's
20 folder as well as the court reporter's folder.

21 This concludes the production of documents as
22 far as the Government is concerned. I have nothing
23 further.

24 MR. EISENBERG: Well, I'm again going to say that
25 it is my understanding that the court order provided as



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to certain items that we had a right to go into. I think the Court listed five. Among them the Court stated "One, whether the nature and the extent of the alleged undisclosed contacts changed from a civil audit into a criminal investigation." I want all the contacts that Mr. Kelly had with anybody pertaining to me. I think that's what the Court provided. It's in plain English. I think that's what I am entitled to have. So I don't see anything that-- I mean, I haven't seen anything from you.

Counsel has just referred to a bunch of papers that he has which he hasn't shown me. He has refused to show me. He's got them in the folder, and I haven't seen it.

* Number 2, if so and to what extent Agent Kelly continued the investigation after that point in time.* There is no way I can tell since these papers are being kept from me I think improperly, and there are three other items which are in the order which I assume counsel should have read.

So since he won't give me any of these papers, I feel that there is nothing I can do about it. I'm not going to kick up a fuss. I made myself clear. Everybody is smiling. I'd just as soon keep them smiling, but I've got to get this information somewhere, and I don't know



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how to get it other than legal procedure. So that's I
guess what I'll have to do. Can I see these papers
that you are talking about?

MR. LEVIN: The record should-- The record
should reflect as I've stated before that the originals
of these documents are being made available to
Mr. Eisenberg at this moment, and a copy of all these
documents have also been given to Mr. Eisenberg, and
he will have an opportunity to now to compare the
originals with the document copies if he so wishes.

MR. EISENBERG: My question is what's being
withheld? I'm asking counsel now; I will ask him again.
Will you let me see the records that you had what you
were first going to show me, and then you decided not
to show because what I had asked you made it impossible
for you to give me, because I apparently--I don't know--
I'm asking for more than I was entitled to, whatever?

I want to see the--these records as to every-
body Kelly talked to, all the conferences that he had
pertaining to my case with other people. How else am
I going to know what he conjured up, how else am I going
to know who talked to him.

I'll ask you this question, too. Who's Fred
Maul? Is that me? You can't tell me?

MR. LEVIN: The record should reflect that



we've given Mr. Eisenberg-- We believe we've complied with the Judge's order, and as I stated before we have nothing further.

MR. EISENBERG: Well, you've referred to a Fred Maul. Is that me, or who is it? Is it an agent, or is this a secret? Do you refuse to tell me? Are you talking to me; you're silent.

MR. LEVIN: I'm not here, Mr. Eisenberg, to respond to your inquiries as to the documents. That is something that you will be able to pursue at the hearings in your cross-examination of the Government's witnesses. But as I indicated I am not here to testify. I'm merely here to produce the documents which the Government feels are relevant to the hearing.

MR. EISENBERG: Well, forgetting what the Government feels is relevant, what about what the Judge says is relevant? He wants me to have undisclosed contacts that Kelly had. Now, are you going to give me the contacts or not?

MR. LEVIN: Mr. Eisenberg, if you don't believe that the Government has complied with the Judge's order, you know you are, of course, to bring any motions that you choose to bring. But we believe that we have complied with the Judge's orders, and those documents consist of the relevant documents.



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MR. EISENBERG: Are there other documents that you didn't bring?

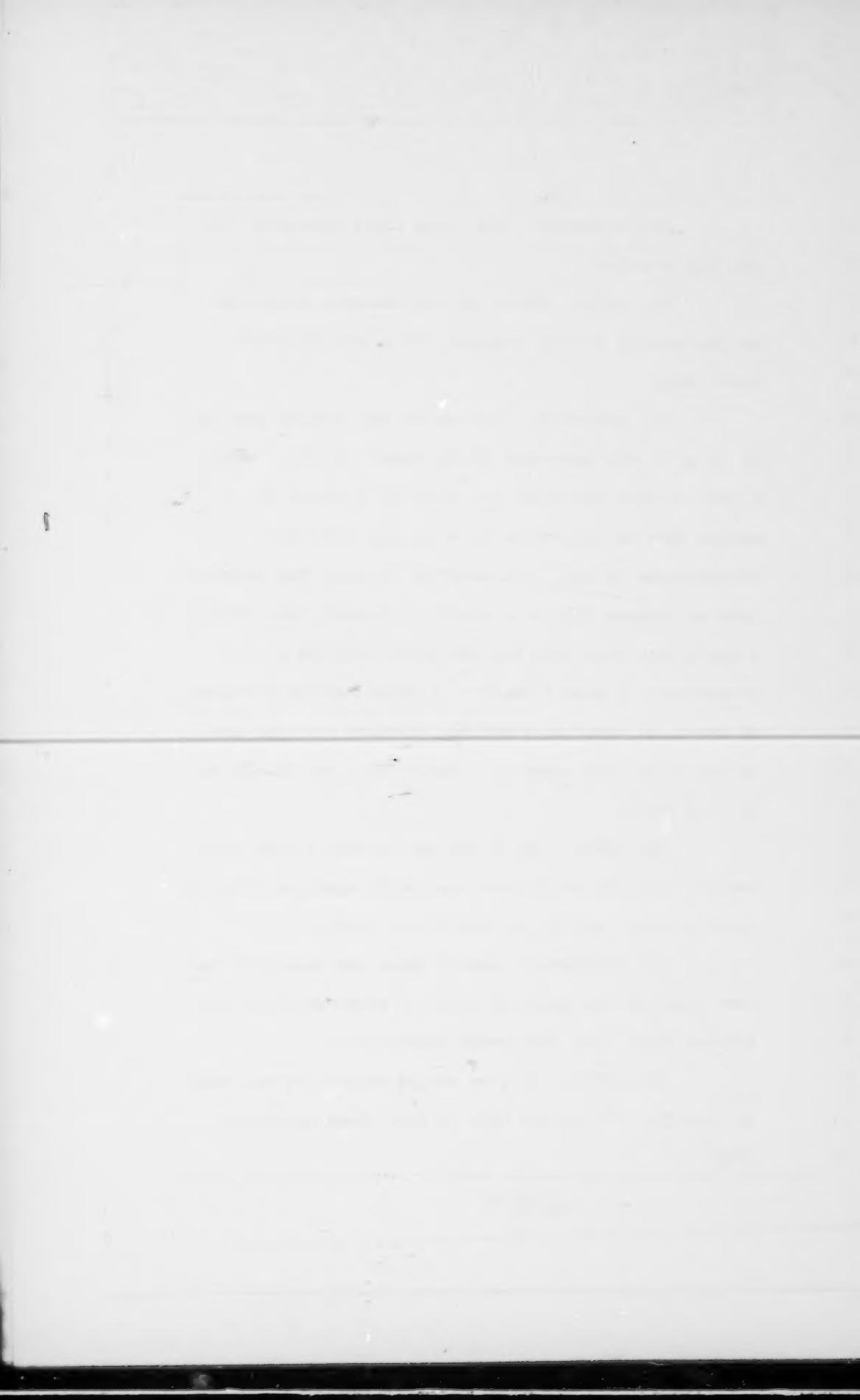
MR. LEVIN: These are the relevant documents to the hearing on your petition for a writ of error coram nobis.

MR. EISENBERG: Are you of the opinion that we can't go to the inception of the case? In other words, I want to know who first put Kelly on my track in the manner that he was put on my track and with what instructions he had. I'm entitled to that. You yourself have to concede that as a lawyer forgetting that you-- I don't know what role you are here. Are you a prosecutor? I didn't think-- I think you are a member of the U. S. Attorney's Office. I think that you are trying to be fair about it. That's what you should be at this point.

MR. LEVIN: All I can say is what I have said before; that is, we believe that we've complied with the Judge's order, and if you don't feel that--

MR. EISENBERG: Aren't there any documents that come ahead of the trial or ahead of whatever point you started here. You have other documents.

MR. LEVIN: As I've stated before I'm not here to testify. I'm merely here to turn these documents over.



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MR. EISENBERG: I'm not asking you to testify.

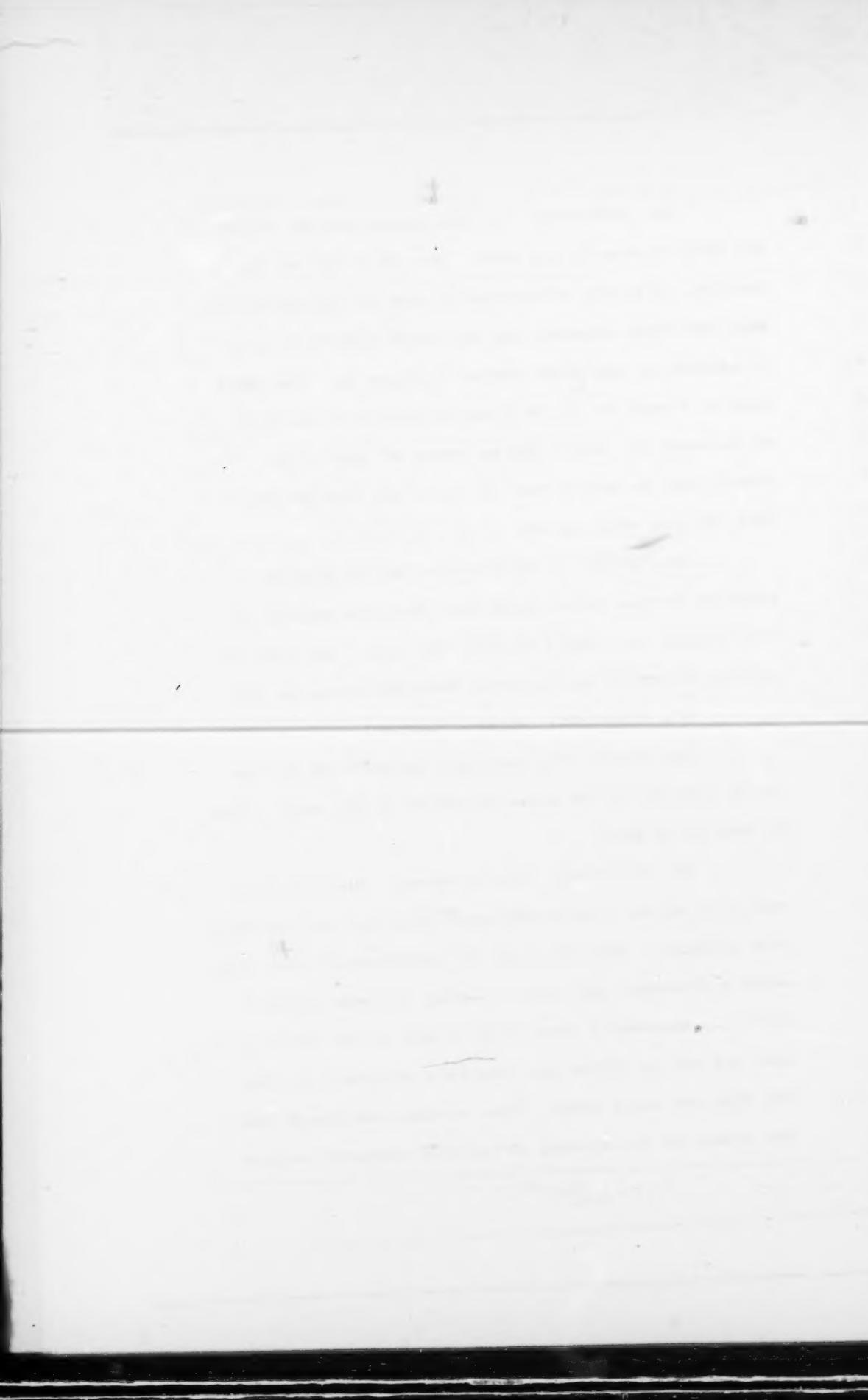
You weren't even in the case. How can I ask you to testify. I'm only asking you to give me the documents that the Court ordered, and the Court didn't say that it started at the point you're starting it. The Court said as I read it if I'm right on page 4 of his order of December 22, 1981. You are aware of that order; aren't you, or aren't you, or don't you want to say that you are aware of it?

MR. LEVIN: I would prefer not to discuss anything at this point other than what the purpose of this hearing is. And I've said repeatedly now that the purpose is merely to turn over these documents to you.

MR. EISENBERG: Which documents?

MR. LEVIN: The documents relevant to the upcoming hearing to the issue remaining in the case. That is what we've done.

MR. EISENBERG: Wait a second. We originally were told at the time of the trial that all the documents were produced. Then we found out subsequently that they weren't produced, and that Mr. Kelly has made several different statements about what he did in his investigation and who he talked to. Now it's important to find out from the court order, "One, whether the nature and the extent of the alleged undisclosed contacts" -- those



1 are the one that I alleged--"undisclosed contacts change
2 from a civil audit into a criminal investigation." And
3 what I want to know is who he talked to that the Judge
4 can determine, not the U. S. Attorney's Office but that
5 the Judge can determine whether or not the civil audit
6 was changed into a criminal investigation. And the
7 only way that we can handle that is to see who he
8 talked to.

9 Now, I'm asking you, are--is this record that
10 you've produced here, does that cover all the people
11 that he's talked to about me.

12 MR. LEVIN: I'll say it once more. These
13 documents are all relevant documents to the hearing on
14 April 1. This is what we're producing for you in
15 compliance with the Judge's orders.

16 MR. EISENBERG: You're not answering the
17 question. My question is not what you think is relevant,
18 because relevancy is a matter of opinion. I want the
19 facts. I want to know if this indicates or this shows
20 everybody that he talked to in the course of his
21 investigation or work, and call it an investigation or
22 work involving my case between him and anybody else
23 during the course of my--his preparation on my case.
24 Do you see what I mean? Now if it doesn't contain
25 everything, I think you should produce the information.

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that it doesn't contain and let the Judge determine whether or not it is relevant. If you don't want me to see it, would you let the Judge see it, or do you feel that you'd have to have a Judge's order?

MR. LEVIN: As I've said, Mr. Eisenberg, these documents we consider to be the relevant documents to this hearing, and I have nothing further to say.

MR. EISENBERG: You're an intelligent guy besides being good-looking and good natured ordinarily. My question is are all the documents—not are these the relevant documents, but are all these all the documents? Are you saying that there is no other document pertaining to me that was made by him in the way of a memorandum, a note concerning my case?

MR. LEVIN: Mr. Eisenberg, I feel I have expressed my position a number of times now. I think you understand it, and I have no further responses to your questions.

MR. EISENBERG: If I get a motion out, don't you think the Court is going to answer that? Are you insisting that I get a motion, which I will if you are not going to answer the question. I am asking you like an officer of the court besides a defendant, and I think as an officer of the court, and I am acting as my



1 my own attorney, which I am an attorney, and I'm asking
2 you to give me a full answer as a lawyer. Does this
3 contain everything or not? Are you going to tell me
4 again it is only what you consider relevant?

5 MR. LEVINE: I have nothing more to say.

6 MR. BRENNER: Well, I think that this is a
7 sham this so-called meeting, if I am not going to be
8 allowed all the contact that the Court ordered. The
9 Court said, "Whether the nature and the extent of the
10 alleged undisclosed contacts changed from a civil audit
11 into a criminal investigation."

12 I think we are just wasting our time. I see
13 no hope of any justice. Counsel gave me—sent a letter
14 dated October 23, which is I consider insulting to my
15 intelligence. It's got two, four, six, seven lines on
16 it, and it says here in reviewing the diary of Simon
17 Levine, which he reviewed, counsel reviewed—Conrad
18 Winters reviewed it, too—found an entry on January 15
19 reflecting a meeting with Fred Maul and our review
20 agent. I've asked who Fred Maul is, and the record will
21 show counsel smiled and declined to answer.

22 Now I think this is a sham. I think this is—
23 I've asked for records in conjunction with the Freedom
24 of Information Act. I've not gotten a disclosure. I was
25 hoping to get it from the Court. I think that the Judge



1 didn't mean for us to be treated this way.

2 Where is the copy?

3 MR. LEVIN: This is the copy.

4 MR. RISENBERG: Is this the copy? I protest.

5 I protest. I protest. I think this is a sham.

6 (Whereupon the proceeding was concluded.)

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-67-¹⁶



FEBRUARY 1971						
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DECEMBER 1970						
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Please use all the resources which you can do better - Classified

JANUARY

15

FRIDAY

15 - 350

8:00 MIL W. ID C.R.F.

8:30

9:00 D. Missionary Development - 1 hr.

9:30 D. Missionary work - 1 hr.

10:00 Laundry - Case is cleaned + 2 hr.

10:30 G. Missionary class 3:45 pm - 1 hr.

11:00 visit David's EGG PAGE + 1/2 hr.

11:30

12:00 C & M - SP

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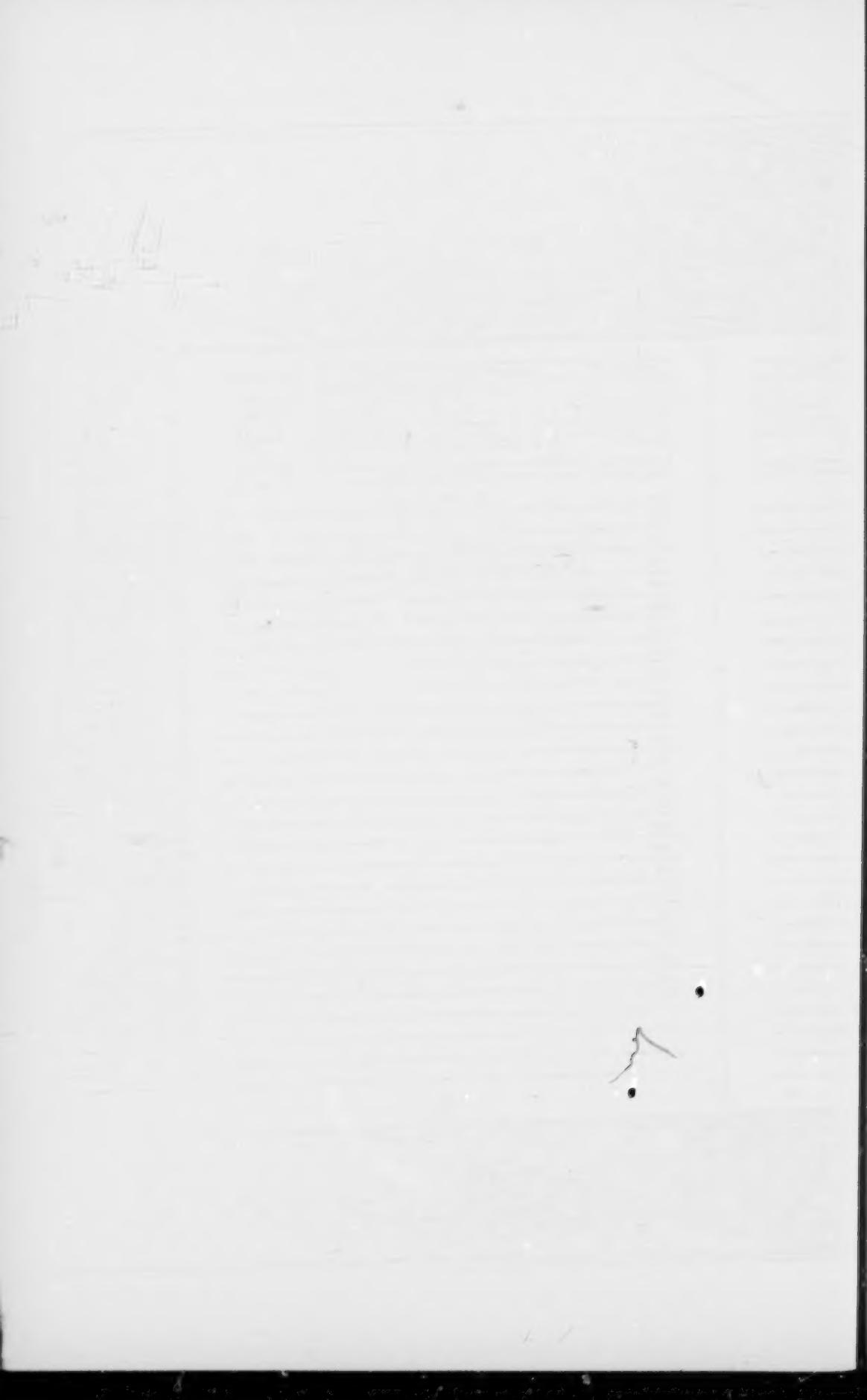
5:30

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U.S. Department of Justice

United States Attorney
Eastern District of Wisconsin

117 East Wisconsin Avenue
Milwaukee, Wisconsin 53212

414/226-7200
414/226-7212

March 10, 1982

Mr. Sydney M. Eisenberg
1131 W. State Street
Milwaukee, WI 53233

Re: United States of America
v. Sydney M. Eisenberg
Case No. 75-CR-136

Dear Mr. Eisenberg:

In preparation for the hearing on April 1, 1982, I requested the diaries and time reports of certain individuals. Some of the documents I requested have been destroyed in compliance with I.R.S. record retention regulations. For your information, I am enclosing copies of the correspondence I received from the I.R.S. relative to this matter.

Sincerely,

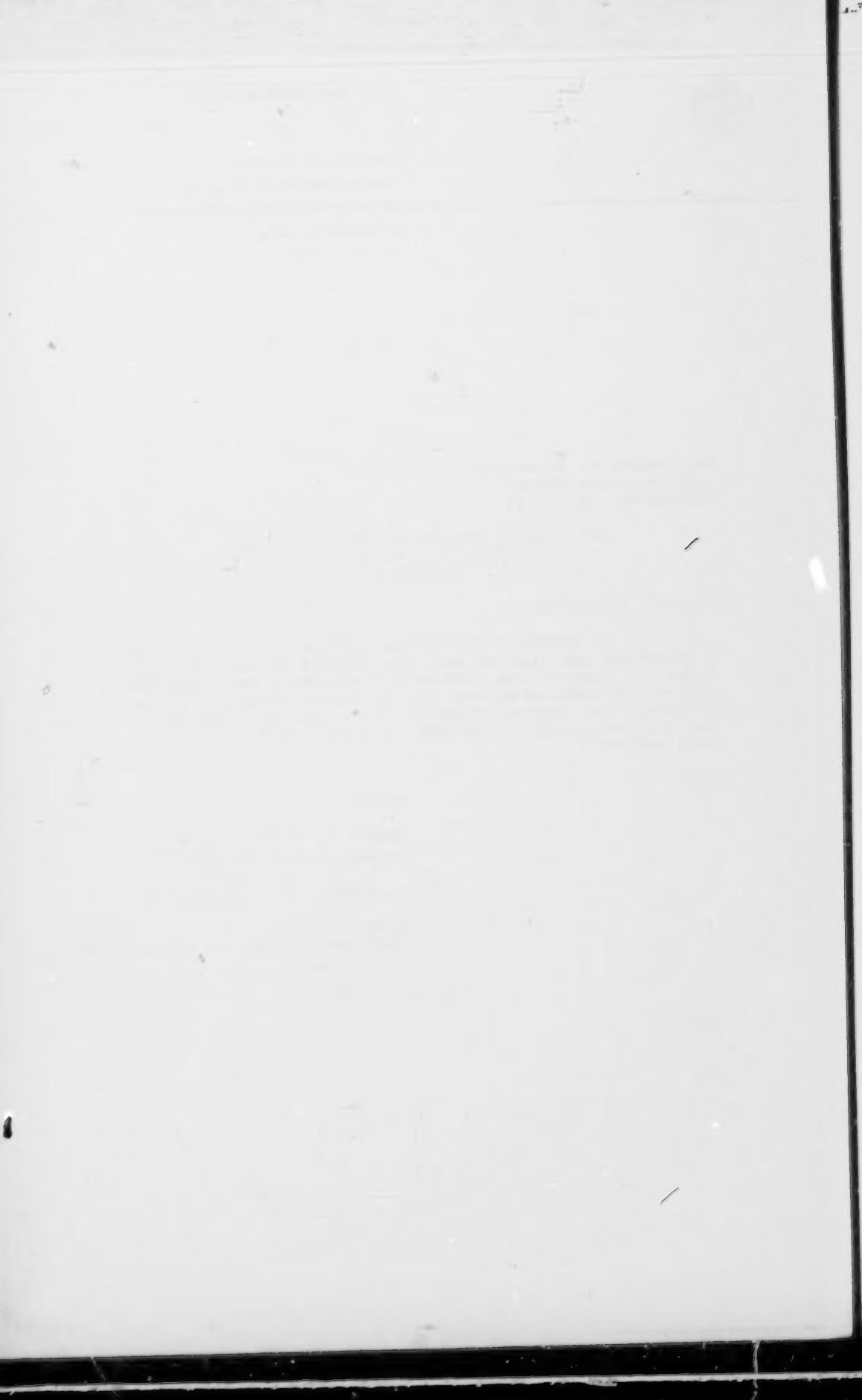
JOSEPH P. STADTMUELLER
United States Attorney

By: *Joel R. Levin*

JOEL R. LEVIN
Assistant United States Attorney

JRL:pas

Enc.



Internal Revenue Service

District
Director

Department of the Treasury

517 E. Wisconsin Ave., Milwaukee, Wis. 53202

Honorable Joseph P. Stadtmauer
United States Attorney
Eastern District of Wisconsin
Room 330, Federal Building
317 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202

To whom it may concern:
Andrew J. Moews
Telephone Number:
(414) 291-3427
Mailing Address:
TTP:J
Date.

Dear Mr. Stadtmauer:

Re: Sydney Eisenberg

This is in response to a telephone request from Assistant U.S. Attorney Joel Levin asking that we search our files for any diaries, time reports and/or appointment sheets that were maintained by any Internal Revenue Service employee who was associated with the examination of Sydney Eisenberg. We have searched our records for the years 1969 through and including 1973 and have located the daily diaries of Special Agents Robert Ubbelohde and Edward Schaalbach for the year 1973. We could locate no other diaries for years prior to 1973.

Time reports and locally prepared sign out registers are destroyed after two years and, therefore, these documents for 1979 and prior are no longer available. It should be noted, however, that Audit Technical Time Reports, Forms 4502, prepared by Revenue Agent Terrence Kelly for November and December of 1969, March through December of 1970, and all twelve months of 1971 were previously given to Mr. Eisenberg pursuant to his Freedom of Information Act request.

The Special Agent diaries mentioned above are enclosed. We have no other diaries, time reports or appointment schedules relative to the period of time with which you are concerned. If you have any additional questions, please contact Disclosure Officer Andrew J. Moews at the number listed above.

Sincerely yours,

Dale F. Roth

Dale F. Roth
Acting District Director

Enclosures

19

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Internal Revenue Service

District
Director

> Mr. Joel Levin
Assistant United States Attorney
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Department of the Treasury

517 E. Wisconsin Ave., Milwaukee, Wis. 53202

Person to Contact:
Elliott E. Lieb
Telephone Number:
214-1204
Date Requested:
C1
Date:

February 2, 1982

Re: Charles H. Howe
Simon Levin
1970 Diaries

Dear Mr. Levin:

In response to your telephonic request, enclosed is a copy of the document generated by the Federal Records Center informing us that the 1970 diaries of the subject individuals have been destroyed.

For your information, I am also enclosing a copy of the pertinent section of IRM 1(15)59-507, which prescribes the retention period and disposal instructions for special agent diaries.

I hope this information will be sufficient. If not, please don't hesitate to give me a call.

Sincerely,


Elliott E. Lieb
Chief, Criminal Investigation
Division

Enclosures



File Reg. #

REFERENCE REQUEST—FEDERAL RECORDS CENTERS

NOTE: Use a separate form for each request.

SECTION I—TO BE COMPLETED BY REQUESTING AGENCY

RECORD GROUP NO

ACCESSION NO.

RECEIVED IN THE LIBRARY ON DATE

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7700661X

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DESCRIPTION OF RECORDS OR INFORMATION REQUESTED (INCLUDE NO. OF PAGES)

Dianies: Howe and Dyer 1970
Levin

NATURE OF SERVICE

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RECORDED ONLY

REPRODUCTION
OF RECORDS

REPRODUCTION
OF RECORDS

OTHER

TRANSMISSION NO.

ATT'DATE

OTHER

RECEIPT OF RECORDS

362-3201

6-19-81

NAME: I.R.S. - Attn: Gale
517 E. Wisconsin, Rm 152
Milwaukee, WI. 53201

RECEIVED RECORDS
RECORDED INDEXED AND FILED THIS DAY AND FORWARDED TO THE
REQUESTING AGENCY. COPY OF THIS FORM IS TO BE MAILED TO THE
REQUESTING AGENCY AS SOON AS POSSIBLE.

SECTION II—FOR USE BY RECORDS CENTER

RECORDS NOT IN CENTER CUSTODY

RECORDS DESTROYED

WRONG BOX NUMBER—PLEASE RECHECK

ADDITIONAL INFORMATION REQUIRED TO IDENTIFY RECORDS
REQUESTED

RECORDS PREVIOUSLY RECEIVED, REFERENCE NUMBER AND DATE RECEIVED
OR SOURCE NUMBER

RECORDS PREVIOUSLY CHARGED OUT TO STORE, JACKET AND CLIP

ASAP

Rejected

8/20/81

DATE

SERVICE

TIME
REQUIRED

EXTRA CHARGE
IF APPLICABLE

SL

SECTION III—TO BE COMPLETED BY REQUESTING AGENCY

General Services Administration
Federal Records Center NARS

TO

RECORDED INDEXED AND FILED

NOTE: In Washington, D.C. area
send to STOP 386

GEN. SERVS. ADMINISTRATION
FEDERAL RECORDS CENTER NARS



U.S. Department of Justice



**United States Attorney
Eastern District of Wisconsin**

111 West Wisconsin Avenue
Milwaukee, Wisconsin 53233

674-251-736
FTS-JAN-1982

February 19, 1982

Mr. Sydney M. Eisenberg
1131 W. State Street
Milwaukee, WI 53233

Re: United States v. Eisenberg
Case No. 75-CR-136

Dear Mr. Eisenberg:

I believe that one page may have been inadvertently left out of the copies you received yesterday. I am enclosing a copy of that page which is from Terry Kelly's 1981-1982 notes (Exhibit No. 24). I am also forwarding a copy of that page to the Court Reporter.

Sincerely,

JOSEPH P. STADTMUELLER
United States Attorney

By: *Joel R. Levin*

JOEL R. LEVIN
Assistant United States Attorney

JRL:pas

Enc.

cc: Theresa G. Bucko

b

Question # 2

Nature of the Contact:

(a) Who was there?

Special Agent Group Manager Simon

Levin, Internal Revenue Agent

Group Manager Fred Mart and
Internal Revenue Agent T. Kelly.

(b) Who arranged the meeting?

Group Manager Fred Mart

(c) What was known then?